

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION**

VICTORIA ALANIZ
Plaintiff

V.

WAL-MART STORES TEXAS, LLC
Defendant

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CIVIL ACTION NO: 2:17-cv-49

**DEFENDANT WAL-MART STORES TEXAS, LLC'S,
NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1446(a) DIVERSITY**

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

PLEASE TAKE NOTICE that Defendant, WAL-MART STORES TEXAS, LLC,
HEREBY REMOVES TO THIS Court the state court action described below:

1. On April 20, 2017, an action was commenced in the 293rd Judicial District Court of the State of Texas in and for Maverick County, Texas, entitled VICTORIA ALANIZ vs. WAL-MART STORES TEXAS, LLC ("Wal-Mart"), as Cause Number 17-04-34220-MCV. A copy of Plaintiff's Original Petition is attached hereto as Exhibit "A".
2. Defendant was served with suit on May 8, 2017.
3. Defendant filed an Original Answer on May 16, 2017, a copy of which is attached hereto as Exhibit "B".
4. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332 and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §1332 (a) in that it is a civil action between citizens of states other than Texas and citizens or subjects of a foreign state, and the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs. Plaintiff's claims are based on alleged injuries suffered by VICTORIA ALANIZ, who fell on Defendant's premises. Based on the initial Petition, Plaintiff pled for damages less than \$75,000.00; however, based on discovery that was received on August 10, 2017, Plaintiff is alleging damages in excess of \$75,000.00, thus the matter in controversy exceeds the sum of \$75,000.00. Please see the attached disclosures and damages alleged attached hereto as Exhibit "C".
5. Defendant is informed and believes that Plaintiff is a resident of the State of Texas based on statements contained in Plaintiff's Original Petition. The incident made

the basis of this lawsuit occurred in Maverick County, Texas. Defendant was at the time of the filing of this action, and still is, a citizen of Arkansas, being incorporated under the laws of the State of Arkansas and having its principal place of business in the State of Arkansas. Defendant is a citizen of Arkansas because it is a limited liability company organized under the laws of Arkansas and because none of its members are residents of the state of Texas. For purposes of determining diversity of citizenship, a limited liability company is deemed a citizen of the states where its members are citizens. *See Basurto v. Mervyn's, LLC*, 2007 WL 390711 at * 1 (N.D. Tex.2007).

6. Removal is proper because there is complete diversity between the parties under 28 U.S.C. § 1332(a). Defendant is a limited liability company and therefore its citizenship is determined by the citizenship of its members. *See, e.g., Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). The sole member of Wal-Mart Stores Texas, LLC is Wal-Mart Stores, Inc., a corporation incorporated under the laws of the State of Arkansas, with its principal place of business in Arkansas. 28 U.S.C. § 1332(a, c); *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (corporation's principal place of business is the place from which the corporation is controlled). Wal-Mart Stores, Inc. is therefore a citizen of Arkansas and of no other state. Because Defendant Wal-Mart Stores Texas, LLC takes the citizenship of its sole member, Wal-Mart Stores Texas, LLC is therefore also a citizen of Arkansas and of no other state.
7. Defendant is removing this case within the 30 day period stipulated by the rules based on notice of the amount in controversy being greater than \$75,000.00. On August 1, 2017, Plaintiff faxed her First Supplemental Response to Requests for Disclosure and submitted the disc of medical records; however, the disc was mailed to the wrong address for Defendant's Counsel. The August 1st disclosure responses indicate that the past medical damages are \$4,868.00. On August 10, 2017, Defendant received the disc containing medical and billing records that show alleged damages in the amount of \$82,368.00. Please see the attached Responses to Disclosures attached as Exhibit C and production of documents, attached as Exhibit D.
8. All pleadings, process, orders, and all other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a).
9. Venue is proper in this district under 28 U.S.C. §1441(a) because this district and division embrace the place in which the removed action has been pending.
10. Defendant will promptly file a copy of this notice of removal with the clerk of the state court in which the action is pending.
11. In accordance with 28 U.S.C. §1441(a), this matter is being removed to U.S. District Court for the Western District of Texas, Del Rio Division because this court is the

court for the district and division embracing the place where such action is pending, i.e., Maverick County, Texas.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing pleading was forwarded to all counsel of record in accordance with the Federal and Texas Rules of Civil Procedure on 6th day of September, 2017 to:

Mario Davila

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Served via email: Mario@MarioDavilaLaw.com and davidmdlw@gmail.com

/s/ Paul Garcia

PAUL GARCIA